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Before the

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

ON S. 761: THE MILLENNIUM DIGITAL COMMERCE ACT OF 1999

May 27, 1999

Mr. Chairman, and distinguished members of the Committee, on behalf of the over 11,000 direct and affiliate member companies of the Information Technology Association of America (ITAA), I thank you for inviting me to participate in today's hearing on the "The Millennium Digital Commerce Act of 1999," S. 761. Our companies are involved in software, services, the Internet, electronic commerce, professional services, information services, and telecommunications. In addition to serving as ITAA President, I am President of the World Information Technology and Services Alliance (WITSA), consisting of 38 information technology associations around the world. Because electronic commerce is a global issue, ITAA is interested in the topic of today's hearing from both a national and international perspective.

ITAA member companies are helping to shape the information age by creating thousands of new sources of information, turning local and regional markets into global markets, and giving businesses and consumers new and efficient means of trading goods and services. In short, our members are at the forefront of the revolution called "Electronic Commerce."

The importance of electronic commerce to the U.S. economy and to American consumers cannot be understated. While estimates of the growth and size of the electronic marketplace vary widely, the Department of Commerce predicts that electronic commerce will account for more than \$70 billion in sales in the year 2000, and Forrester Research projects that more than \$327 billion will change hands over the Internet by 2002. Based on ITAA's own surveys, we see a doubling of the electronic commerce marketplace in just the next six months. Given this dramatic growth, the creation of a secure environment for electronic commerce is vital to both American consumers and the American economy.

ITAA last month released the results of a survey on electronic commerce barriers that we

conducted in conjunction with Ernst and Young. The survey – measuring the perceptions of top executives from across the information technology industry and their customers – found that 62% of respondents believed lack of trust was the top overall barrier to e-commerce. When probed for specific obstacles, respondents identified privacy protection (60%), authentication (56%) and security (56%) as the three top-level trust concerns. While privacy and security have received a good deal of media attention, concerns about authentication – knowing who you are really dealing with on the Internet – appear to be growing in significance.

We are clearly in a remarkable stage of growth in electronic commerce. It is no surprise that concerns about authentication are growing, too. When people are online, they want to know with whom they are dealing. They want to know that people are who they say they are and are going to follow through with commitments made over the Internet.

The famous New Yorker cartoon says the great thing about the Internet is that no one knows you're a dog. That is humorous, but it is not what buyers and sellers really want. They want to know they are not dealing with dogs. Protecting the integrity of the content is also critical. They want to know you mean what you communicated you mean. The continued growth of electronic commerce depends on the development of a legal framework of contract law that will supply uniformity and legal certainty to transactions in cyberspace.

We were strong supporters last year of S. 2107, The Government Paperwork Elimination Act. This legislation was the right first legislative step on electronic authentication. The bill was simple and straightforward: it required federal agencies to make all of their forms available online in a reasonable period of time, and gave an electronic signature the same legal recognition as a handwritten signature. We are pleased to see that the Office of Management and Budget (OMB) is following through on this important new law, and

prodding the agencies to move forward with the implementation.

S. 2107 dealt with how private parties deal with federal agencies in the realm of electronic signatures. S. 761 addresses the commercial environment, and is the right next step. It would do what is needed more than anything else to encourage the growth of electronic commerce: it will build trust in the medium by creating a consistent legal framework across the states. It is a modest bill that strikes a successful balance in a number of ways. For example, the bill uses a very light form of state preemption. Its provisions will not apply to states that have embraced the Uniform Electronic Transactions Act, which should be completed soon. S. 761 is also cautious in ensuring that the government does not skew the evolving marketplace for authentication services. In short, the bill does not get out ahead of the private sector in the development of technologies and standards.

An important cornerstone of S. 761 -- which will help to build trust in electronic commerce -- is what are called the "party autonomy" provisions. These provisions ensure that if several parties agree to use a specific authentication technique, then this should be respected in the courts, regardless of jurisdiction.

Why is this bill important?

Let me illustrate how S. 761 will create legal trust and certainty in authentication techniques, creating efficiencies and reducing costs. Let's assume that a major auto manufacturer is based in the U.S. with operations and dealers around the world. The company has created a site on the Internet not only for its dealers but also for the hundreds of companies globally that perform repairs and do maintenance on these cars. So the web site contains catalogue information -- which is changing constantly and needs to be kept up to date -- on what models are available at what cost, and the prices

associated with all the various parts available for repairs. The web site is password protected, but also requires dealers to authenticate the purchase of cars using a digital signature to verify the purchase. Such a system creates enormous efficiencies and reduces costs by improving inventory management and reducing paperwork costs. It also improves the company's supply chain management, and allows the dealers to tell its customers what kinds of cars are available with what features and when they will be delivered. There may still be some negotiation over price – the Internet can't change all realities overnight!

S. 761 creates the legal trust and certainty necessary to make it easier for our car manufacturer to develop and use such an efficient Internet-based system. The bill ensures that when a dealer buys 30 new cars, a legal framework exists to authenticate the purchase using the digital signature that all the parties have agreed upon. And it ensures that the laws of individual states respect the agreement reached on the specific authentication technique used by the car manufacturer and its dealers should any disputes arise. Such a system also makes it virtually impossible for a hacker to corrupt the system or submit false orders.

In our example, the overall benefit of such a system is reducing the cost of cars for consumers, and allowing consumers to order cars with specific features that will be delivered in shorter time-frames.

S. 761 also ensures that if the company and its dealers wanted to use a different kind of authentication technique (for example, a biometric method), that they could do so. So the bill is technology neutral and allows the marketplace to develop the best possible procedures.

Further, S. 761 supports a similar consistent framework on an international level. It

supports the U.S. Government's efforts to negotiate multilateral and bilateral treaties to accomplish the same goals. This is important because the Internet is a global medium that transcends national boundaries.

ITAA has embraced a number of important principles on authentication and electronic signatures. S. 761 is totally consistent with these principles:

The private sector must lead in the setting of standards and approaches on digital signatures. For example, any accreditation standards for certificate authorities (CAs) should be developed by the private sector. Legislation and regulation should not impede development of industry-led, cost-effective, market-trusted authentication services created in a competitive environment.

Any legislation on electronic signatures must be technology neutral.

Any legislation on electronic signatures must be industry neutral.

Let the marketplace decide what is the most appropriate solution for any given level of agreement or transaction. For example, a major financial transaction involving the transfer of millions of dollars might involve a CA, hewing to a specified level of standards, protected by unbreakable security. Whereas a consumer buying a product over the Web might accept a lower and less expensive standard with high, but not unbreakable security.

Encryption and the issue of trusted third parties should be treated as a separate issue from electronic signatures.

State, national, and international laws governing electronic authentication need to be

harmonized, with mutual recognition of national and subnational laws. A framework needs to be in place that allows for electronic authentication to be used across national borders. Governments must avoid using electronic authentication laws as non-tariff barriers.

Legal authorities should recognize the equivalency of traditional and electronic signature and record requirements.

While S. 761 cannot deal with all of these questions, it is consistent with these goals. For example, the bill is supportive of the negotiating position of the U.S. in both bilateral and multilateral discussions designed to foster trust in electronic authentication across borders, without mandating legislative solutions.

Legislation that establishes a consistent legal framework for electronic authentication and thereby fosters a secure environment for electronic commerce will maximize the benefits of the global electronic marketplace for American consumers and the economy.

We wish to thank the sponsors of this bill for your leadership. ITAA looks forward to supporting this bill aggressively as it moves through the Senate, as well as similar legislation in the House.